



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lister Bolt & Chain, Ltd.

File: B-224473

Date: September 15, 1986

DIGEST

1. By statute, military agencies need not obtain full and open competition and may use other than competitive procedures when it is necessary for industrial mobilization purposes to award the contract to a particular source or sources. Therefore, since the normal concern of maximizing competition is secondary to the needs of industrial mobilization, decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization will be left to the discretion of the military agencies absent compelling evidence of an abuse of that discretion.

2. An entire fiscal year requirement can be awarded to one of several mobilization base producers regardless of the effect on dormant producers since participation in an industrial mobilization base does not guarantee award of any of an agency's current requirements.

DECISION

Lister Bolt & Chain, Ltd. (Lister) protests the proposed award of a sole-source contract to Baldt, Inc. under request for proposals (RFP) No. N62578-86-R-6034, issued by the Department of the Navy. The procurement is to satisfy the agency's Fiscal Year 1986 mooring chain requirements. The supplies being acquired are various sizes of stud link chain and related hardware to form complete mooring assemblies. Lister, a Canadian "Planned Producer" of stud link chain, complains that the proposed sole-source award is improper because it excludes the firm from an opportunity to compete for that portion of the Navy's requirements it is capable of fulfilling.

We deny the protest.

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BACKGROUND

Baldt and Lister are currently the only mobilization base "Planned Producers" of stud link chain^{1/} under the United States Department of Defense (DOD) Industrial Preparedness Program. Since March, 1986, Lister has been designated a "Planned Producer" of stud link chain ranging in size from 3/4 to 1 7/8 inches in diameter.

To be designated a "Planned Producer", a firm must have indicated its willingness to produce specified military items in a national emergency by completing a DD Form 1519, "DOD INDUSTRIAL PREPAREDNESS PROGRAM PRODUCTION PLANNING SCHEDULE." Government production planning officials then survey the firm's facilities and negotiate a production planning schedule which is incorporated in the DD Form 1519. A firm is considered a mobilization base producer after completion and approval of its DD Form 1519. See Action Mfg. Co., B-221607.2, July 7, 1986, 86-2 CPD ¶ 35.

On April 11, 1986, the Navy executed a Justification and Approval (J&A) for the award of the Navy's Fiscal Year 1986 (FY 86) mooring chain requirements to Baldt on a sole-source basis under the authority of 10 U.S.C. § 2304(c)(3) (Supp. III 1985). That statutory section allows the head of a military agency to use other than competitive procedures in awarding a contract to a particular source or sources when such action is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization. The Navy's J & A found that Baldt was the only known domestic producer of both mooring and anchor chain, and that its ability to remain a viable industrial mobilization base producer of anchor chain would be seriously jeopardized if it were not awarded the mooring chain contract. The J & A noted that the Navy's current requirements for anchor chain, an industrial mobilization base item, were not enough to maintain Baldt's mobilization base production capability. Accordingly, the Navy added mooring chain to the industrial mobilization base for FY 86

^{1/} Stud link chain is so named because each oval chain link is vertically bisected by a small metal bar or stud which prevents the links from becoming entangled. Accordingly, stud link chain is generally used for anchor chain because of the risk of entanglement caused by the repeated raising and lowering of the anchor. However, stud link chain is also often used for mooring assemblies instead of "open" link chain, even though moorings are fixed in place.

with the intent to conduct an analysis of the continued need for a mobilization base for both anchor and mooring chain prior to the start of the next fiscal year.

On May 21, the Navy published notice in the Commerce Business Daily (CBD) of its intent to negotiate a sole-source contract with Baldt for 1307 "shots" (90-foot lengths) of stud link chain in sizes from 1 3/4 inch to 3 1/2 inch, including other related accessories such as joining links and swivel shackles, so as to constitute complete mooring assemblies. Lister brought to the Navy's attention the fact that it was a "Planned Producer" of stud link chain in sizes up to 1 7/8 inch, and requested the opportunity to submit a proposal for that portion of the mooring chain requirement it was capable of fulfilling. However, the Navy did not alter its original determination to award the entire contract to Baldt on a sole-source basis in the interests of industrial mobilization.

ANALYSIS

Under the Competition in Contracting Act of 1984 (CICA), military agencies continue to have authority to conduct procurements in a manner that enables them to establish or maintain sources of supply for a particular item in the interest of the national defense, see 10 U.S.C. §§ 2304(b)(1)(B) and 2304(c)(3), supra, and the agencies need not obtain full and open competition where the procurement is conducted for industrial mobilization purposes and may use other than competitive procedures where it is necessary to award the contract to a particular source or sources. Urdan Industries, Ltd., B-222421, June 17, 1986, 86-1 CPD ¶ 557.

Therefore, although it is the established policy of this Office to scrutinize closely sole-source procurement actions, see Jervis B. Webb Co. et al., B-211724, et al., Jan. 14, 1985, 85-1 CPD ¶ 35, it is also our view that decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization involve complex judgments which must be left to the discretion of the military agencies. Wayne H. Coloney Co., Inc., 64 Comp. Gen. 260 (1985), 85-1 CPD ¶ 186; Urdan Industries, Ltd., B-222421, supra. This Office will question those decisions only if the evidence convincingly shows that the agency has abused its discretion. Martin Electronics, Inc., 65 Comp. Gen. 59 (1985), 85-2 CPD ¶ 504. We limit our standard of review in such cases because

the normal concern of maximizing competition is secondary to the needs of industrial mobilization. Id.; National Presto Industries, Inc., B-195679, Dec. 19, 1979, 79-2 CPD ¶ 418.

Lister's essential ground of protest is that it should be awarded a portion of the Navy's FY 86 mooring chain requirement because it has been designated a "Planned Producer" of stud link chain for sizes up to 1 7/8 inch, and that it needs the award to maintain its own mobilization base viability. However, we have expressly held that an entire fiscal year requirement can be awarded to one of several mobilization base producers, regardless of the impact on dormant producers, since participation in an industrial mobilization base does not guarantee award of any of an agency's current requirements. Sooner Defense of Florida, Inc., B-216651, Feb. 11, 1985, 85-1 CPD ¶ 178. Therefore, the fact that Lister can satisfy a portion of the procurement--that calling for 425 "shots" of 1 3/4 inch stud link chain--imposes no legal obligation on the Navy to compete that item if the needs of industrial mobilization dictate otherwise. We reasonably read the Navy's April 11 J & A as indicating that Baldt's mobilization base production capability can only be sufficiently maintained through an award of all of the Navy's current mooring chain requirements.

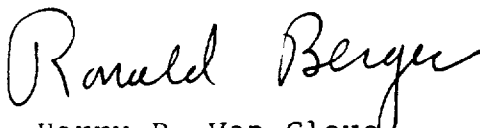
Lister also contends that because mooring chain has not been an industrial mobilization base item, it is therefore improper to sole-source the requirement to Baldt under the authority of 10 U.S.C. § 2304(c)(3), supra, in order to maintain Baldt's anchor chain production capability. However, we believe it is obvious that the Navy's proposed sole-source action is fundamentally intended to preserve Baldt's overall capability to produce stud link chain in a significant range of sizes for industrial mobilization purposes. Therefore, even though anchor chain alone was originally designated as a mobilization base item, the present addition of mooring chain to the mobilization base and the award of a contract for stud link chain to be used for mooring assemblies nonetheless directly serves the interests of national defense.

Furthermore, we find no merit in Lister's argument that the proposed award is improper because it results from the lack of advanced planning. It is true that the CICA does not recognize the lack of advance planning as a justification for the use of other than competitive procedures, 10 U.S.C. § 2304(f)(5)(A); see also TMS Building Maintenance, 65 Comp. Gen. 222 (1986), 86-1 CPD ¶ 68, and that market research is a necessary aspect of sound procurement planning. 10 U.S.C. § 2305(a)(1)(A)(ii). However, the Navy's April 11 J & A

specifically concluded that a survey of the market was not applicable because the Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics) had very recently determined that "Bal dt . . . is the only domestic source capable of satisfying the requirement." Although Lister disputes that determination^{2/}, we find it to be reasonable in view of the fact that Bal dt can furnish stud link chain in all of the various sizes, including associated hardware, required by the Navy for its current mooring assembly needs, whereas Lister can only supply the 1 3/4 inch size chain. In our view, therefore, Lister cannot be regarded as a supplier capable of meeting the Navy's full and immediate mobilization base requirements. See Wayne H. Coloney Co., Inc., supra, 64 Comp. Gen. at 262, 85-1 CPD ¶ 186 at 4.

We conclude that the facts of this case fail to show that the Navy has abused its discretion in proposing to award a sole-source contract to Bal dt for purposes of industrial mobilization. Martin Electronics, Inc., supra, 65 Comp. Gen. at 61.

The protest is denied.


for Harry R. Van Cleave
General Counsel

^{2/} Lister argues that Bal dt properly cannot be deemed to be the "only domestic source" since the Department of Defense Supplement to the Federal Acquisition Regulation (DOD FAR Supp.), 48 C.F.R § 208.070(b) (1985), defines the industrial base to include "capacity located in Canada" as well as the production capacity of the United States. However, even though Lister is a Canadian "Planned Producer," we do not believe that the Navy's position is in error for the reason stated above that only Bal dt can fully meet the Navy's requirements for stud link chain in sizes up to 3 1/2 inch. Since the Navy's position is reasonable, we need not consider Lister's contention that its exclusion from this procurement is an action inconsistent with the cooperative economic agreement that exists between the United States and Canada for mutual defense procurement purposes. See DOD FAR Supp., 48 C.F.R. § 225.7101, et seq.; 52 Comp. Gen. 136 (1972).